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APPLICATION NO. FILING DATE		G DATE	FIRST NAMED INVENTOR Katsuyuki Hamada	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,047	10/576,047 04/14/2006			TSU-006	8849
38051 KIRK HAHN	7590 1	05/29/2007		EXAM	INER .
14431 HOLT AVE				HIĻL, KEVIN KAI	
SANTA ANA, CA 92705			ART UNIT	PAPER NUMBER	
				1633	
				MAIL DATE	DELIVERY MODE
				05/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

1) Responsive to communication(s) filed on		Application No.	Applicant(s)				
### Examiner Art Unit Kevin K. Hill, Ph.D. 1633 **The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. **Ententions of inter any is passed above, the mailums address of SC RR 1.138(s), in no event, however, may a reply be treaty ited **If No proof to may in specifie down, the mailums address present all approve will be included. **No MONTH's from hemiling date of this communication in 18 No providence and status of the score of the communication become ABANDONED (33 U.S.C. § 133). **If No proof to map it is provided before district the mailing date of this communication to become ABANDONED (33 U.S.C. § 133). **If No proof to map is specified above, the mailums date of the communication is even if timely field, may redoce any certed patent term adjustment. **Set 37 CFR 1.704(b). **Status** **In Responsive to communication(s) filed on	•	10/576,047	HAMADA ET AL.				
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2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-23 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are objected to. 8) Claim(s) is/are objected to. 8) Claim(s) 1-23 are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage-application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Informal Patent Application	Status	•	•				
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Application/Control Number: 10/576,047

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Election/Restrictions

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Claim(s) 1-23, drawn to a cancer gene therapeutic drug composition comprising a virus that induces a CTL reaction and a cell infected with an oncolytic virus before administration to a subject, and a method of cancer gene therapy comprising the steps of administering said virus that induces a CTL reaction and said cell infected with an oncolytic virus.

1. This application contains claims directed to the following patentably distinct species:

- i) viral species, as recited in Claim 2, and
- ii) carrier cells species, as recited in Claims 4 and 21-23,
- iii) promoter species, as recited in Claim 5,
- iv) alternative additional therapeutic compound species, as recited in Claims 6-9 and 16-
- 19 (Note that Claims 8, 18 and 19 each recite three alternative species within.),
- v) alternative viral administration rates and particle value species, as recited in Claims 12-14.

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 and 372 to elect a single disclosed species from (i), (ii), (iii), (iv) and (v) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, Claims 1 and 10 are respectively generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another

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species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete <u>must</u> include (i) an election of a species to be examined even though the requirement <u>may</u> be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, Applicant must indicate which of these claims are readable on the elected species.

Should Applicant traverse on the ground that the species are not patentably distinct, Applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the Examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin K. Hill, Ph.D. whose telephone number is 571-272-8036. The examiner can normally be reached on Monday through Friday, between 9:00am-6:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph T. Woitach can be reached on 571-272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Yen Hoffin

Joe Walack AU1633